

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHANNA ATTERBERY,

Plaintiff,

v.

YUKON ZAK LLC, ET AL.,

Defendants.

Case No. 1:22-cv-01059-JLT-CDB

ORDER TO SHOW CAUSE WHY
SANCTIONS SHOULD NOT BE IMPOSED
FOR THE PLAINTIFF'S FAILURE TO
PROSECUTE THIS ACTION AND TO
COMPLY WITH THE COURT'S ORDERS

ORDER CONTINUING THE MANDATORY
SCHEDULING CONFERENCE

DEADLINE: JANUARY 11, 2023

Plaintiff filed a complaint in this action on August 19, 2022. (ECF No. 1.) On August 22, 2022, Plaintiff filed a "Notice of Errata" setting forth that the complaint inadvertently listed the incorrect venue, and that venue in fact was proper in the Eastern District of California. (ECF No. 3.) The following day, the Clerk of Court issued a summons and the Court entered an Order setting a mandatory scheduling conference. (ECF Nos. 4, 6.) The Order directed Plaintiff to "diligently pursue service of summons and complaint" and "promptly file proofs of service." The Order further advised Plaintiff that failure to diligently prosecute this action "may result in the imposition of sanctions, including the dismissal of unserved defendants."

On November 8, 2022, the Court ordered Plaintiff to show cause why sanctions should

1 not be imposed for Plaintiff's failure to prosecute the action and comply with the aforementioned
2 Order directing Plaintiff to promptly file proofs of service. (ECF No. 8). Because no proofs of
3 service had been filed and because none of the defendants had appeared, the Court also
4 continued the mandatory scheduling conference from December 8, 2022, to January 11, 2023.
5 On November 16, 2022, Plaintiff filed a belated response to the show cause order through the
6 declaration of attorney Igor Fradkin in which Mr. Fradkin attributed the delay in service of the
7 summons/complaint and filing proofs of service to a "technical failure of case file transfers"
8 relating to his law firm's change in database systems. (ECF No. 9.)

9 The Court discharged the show cause order and directed Mr. Fradkin no later than
10 November 24, 2022, to file proofs of service or a report explaining why service had not been
11 completed by that date. (ECF No. 10.) Mr. Fradkin timely filed a declaration on November 23,
12 2022, in which he attested to difficulties encountered by his process server during attempted
13 service of the summons and complaint on all defendants on November 16, 2022. (ECF No. 11).
14 As of the date of this Order, Plaintiff still has not filed proofs of service.

15 Where a plaintiff fails to serve a defendant within 90 days after the complaint is filed,
16 Rule 4(m), Fed. R. Civ. P. requires the Court to dismiss the action or order that service be made
17 within a specified time.

18 Separately, Rule 4(m) provides that a plaintiff's time to serve the summons and
19 complaint shall be extended if he shows "good cause" for his failure to complete service within
20 90 days of filing the complaint. *In re Sheehan*, 253 F.3d 507, 512 (9th Cir. 2001). Here, neither
21 of Mr. Fradkin's declarations (ECF Nos. 9 & 11) establish good cause for Plaintiff's failure to
22 serve the summons and complaint within the 90-day period pursuant to Rule 4(m). Nevertheless,
23 the Court will exercise its "broad" discretion under Rule 4(m) to extend Plaintiff's time to serve
24 the summons and complaint in light of Mr. Fradkin's sworn declarations that he attempted to
25 serve the summons and complaint at alternative addresses for all three defendants on November
26 23, 2022 (ECF No. 11 at ¶¶ 5-6) *Sheehan*, 253 F.3d at 513.

27 Based on the foregoing, IT IS HEREBY ORDERED Plaintiff SHALL show cause why
28

1 sanctions should not be imposed for the failure to prosecute this action and to serve the summons
2 and complaint in a timely manner no later than **January 11, 2023**. Alternatively, the plaintiff
3 may file proofs of service on or before January 11, 2023, demonstrating the summons and
4 complaint has been served on all defendants.

5 IT IS FURTHER ORDERED that the mandatory scheduling conference previously set
6 for January 11, 2023, is CONTINUED to **February 10, 2023** at 10:00 a.m.

7 Plaintiff is advised that failure to respond to this Order to Show Cause may result in
8 dismissal of this action.

9 IT IS SO ORDERED.

10 Dated: **December 20, 2022**

11 
UNITED STATES MAGISTRATE JUDGE